

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 99-568

March 7, 2000

**SKOWHEGAN ONLINE, INC.**

Petition for Finding of Public  
Convenience and Necessity to  
Provide Service as a Local  
Exchange Carrier and as  
a Reseller Interexchange  
Telephone Utility

ORDER GRANTING AUTHORITY  
TO PROVIDE FACILITIES-BASED AND  
SERVICES RESOLD DEDICATED AND  
APPROVING TERMS AND CONDITIONS

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WELCH, Chairman; NUGENT and DIAMOND, Commissioners

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In this Order, the Commission grants Skowhegan Online, Inc. (Skowhegan Online) the authority to provide facilities-based and resold dedicated services in the State of Maine, and approves the Company's initial Terms and Conditions. We also exempt Skowhegan Online from the requirements of Chapter 210, *Uniform System of Accounts*, and of 35-A M.R.S.A. §§ 707 and 708, subject to the conditions described below.

**I. APPROVAL OF APPLICATION TO SERVE**

On August 17, 1999, pursuant to 35-A M.R.S.A. §§ 2102 and 2105, Skowhegan Online filed a application with the Commission requesting authority to provide 'local and interexchange point to point data circuits in Maine.' The petition stated that Skowhegan Online "does not at this time intend to provide local or long distance voice services (switched services) ... ." <sup>1</sup> We consider the application as requesting authority to provide dedicated, unswitched service. Dedicated facilities may carry both local and interexchange traffic. We grant the authority to provide dedicated services.

Before we grant approval under section 2102 for another public utility to provide service, 35-A M.R.S.A. § 2105 requires us to find that the public convenience and necessity require another utility to provide service in a location where a utility is already authorized to provide, or is providing, the same or similar service.

47 U.S.C. § 253(a), enacted by the Telecommunications Act of 1996, states:

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<sup>1</sup> The application also states that Skowhegan Online "would accept authority to do so, "i.e., provide switched voice services. In order to conserve central office (NXX) codes, we do not grant authority to provide facilities-based local exchange service unless a carrier establishes that it will be able to provide such service within 6 months. We do not impose such a restriction on granting the authority to provide resold local exchange service or either resold or facilities-based interexchange service, but Skowhegan Online has made clear that it does not intend to offer those services at this time.

(a) In General. No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunication service.

47 U.S.C. § 253(b) states, however:

(b) State Regulatory Authority. Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

We find that granting Skowhegan Online the authority to provide local exchange service will not impede the preservation or advancement of the public interest goals or policies stated in section 253(b).

Skowhegan Online's application provides reasonable information indicating that its financial and management capabilities are adequate to provide local services in Maine.

## **II. SERVICE TERRITORY**

Skowhegan Online has requested authority to provide dedicated telephone service throughout the state. Facilities-based dedicated service includes service provided through the use of facilities obtained from an incumbent local exchange carrier.

If Skowhegan Online wishes to expand its authority to include facilities-based or resold local exchange service or facilities-based or resold interexchange service in the future, it shall seek approval pursuant to 35-A M.R.S.A. § 2102, requesting the Commission to amend this Order. If Skowhegan Online requests authority to provide facilities-based switched local exchange service (including through the use of the UNEs), its proposed service territory for that service shall be limited to those areas in which it will be ready to provide facilities-based switched local exchange service within six months. It is not necessary for Skowhegan Online to present a full application in order to request additional authority. With any such application that requests authority to provide facilities-based local exchange service, Skowhegan Online shall include information establishing a readiness to provide facilities-based local service within six months in those specifically identified areas.

## **III. APPROVAL OF TERMS AND CONDITIONS AND RATE SCHEDULES**

We allow the terms and conditions proposed by Skowhegan Online to go into effect. Skowhegan Online has used the Commission's standard terms and conditions that comply

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with Maine law and the Commission's Rules. Nevertheless, if there is any conflict between a provision in Skowhegan Online's terms and conditions and the Commission's Rules or a statute, the rule or statute will control. Included in the Terms and Conditions are pages stating that in the event of such a conflict, the statute or the Commission's rule will control.

Skowhegan Online has not proposed any rates. If Skowhegan Online intends to provide any intrastate service, it must file rates with the Commission pursuant to 35-A M.R.S.A. § 304, which requires a utility to file rate schedules and terms and conditions prior to providing a intrastate service.<sup>2</sup>

In general, the Commission believes that a competitive telecommunications market results in services and rates that benefit the public. We believe that the acceptability of Skowhegan Online's services and rates in the market place provides an adequate test of the reasonableness of intrastate rates. Accordingly, if Skowhegan Online files intrastate rates, we will allow them to go into effect.

#### **IV. INTERCONNECTION AGREEMENT(S)**

In order to provide local exchange service, a competitive local exchange carrier must, as a practical matter, obtain an interconnection agreement with the ILEC(s) providing service in any area where it intends to provide service. In the absence of such an agreement, it will not be possible for Skowhegan Online's customers to call customers of the ILEC(s), and vice versa. Interconnection agreements are governed by 47 U.S.C. § 252, and must be approved by this Commission. Skowhegan Online does not intend and is not authorized at this time to provide switched services and therefore will not be attempting to connect its customer to the customers of other LECs. It has stated that it does, however, plan to purchase loops from Bell Atlantic, and an interconnection agreement may be required for that purpose. If Skowhegan Online executes an interconnection agreement(s) with ILECs(s), it shall obtain approval of that agreement by this Commission.

If Skowhegan Online were to become a CLEC and to make a bona fide request for an interconnection agreement with an ILEC that is a "rural telephone company" as defined in 47 U.S.C. § 153(37), the "rural exemption" of 47 U.S.C. § 251(f) will apply. All of Maine's independent incumbent local exchange carriers are "rural telephone companies." A rural telephone company is not required to negotiate an interconnection agreement or provide interconnection until after the Commission, pursuant to 47 U.S.C. § 251(f)(1)(B), finds that

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<sup>2</sup> Skowhegan Online's primary business will be to provide direct connections from customers to itself as an internet service provider. According to a recent FCC decision (under review), internet traffic is interstate. Skowhegan Online understands that if it provides dedicated facilities that may carry intrastate traffic, it may need to file intrastate rates.

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the requirement "is not unduly economically burdensome, is technically feasible, and is consistent with [the universal service provisions of] section 254 . . . ."

## **V. WAIVERS; REPORTING REQUIREMENTS**

As a condition of providing local exchange service, Skowhegan Online must comply with the terms of any applicable Commission orders or rules that may govern local interconnection and compensation for interconnection. Skowhegan Online shall also comply with any applicable Commission Rules or orders that govern universal service, public safety and welfare, service quality and consumer rights.

Skowhegan Online has requested waivers from the requirements of Chapter 210 of the Commission's Rules, which governs telephone utility accounting, and we grant that waiver. Skowhegan Online has not request a waiver from the requirements of 35-A M.R.S.A. §§ 707 and 708, which govern reorganizations and affiliated interests. The Commission has the authority to grant such a waiver on its own motion, however, and we do so. Because Skowhegan Online's rates and operations are likely to be subject to market forces, we do not see any present need to subject the Company to those requirements. However, Skowhegan Online must report its annual intrastate gross operating revenues and its annual intrastate minutes for use for the purpose of determining its regulatory assessment.<sup>3</sup> If Skowhegan Online resells service to other switched or switchless telephone service providers, the Company must maintain its records so that it may separately identify those sales.

In addition, Skowhegan Online shall inform the Commission of any changes to its corporate structure and ownership and of any changes in the name under which it does business, as set forth in Ordering Paragraph No. 3. If necessary, it shall also refile its rate schedules and terms and conditions to reflect its new identity.

## **VI. OTHER REQUIREMENTS**

Skowhegan Online shall comply with all applicable rules of the Commission and statutes of the State of Maine.

## **VII. ORDERING PARAGRAPHS**

Accordingly, we

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<sup>3</sup>The Commission mails the annual reporting forms to carriers in January of each year. The completed forms are due by April 1 of each year.

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1. Grant, pursuant to 35-A M.R.S.A. §§ 2102 and 2105, the request of Skowhegan Online, Inc. to provide facilities-based and resold dedicated unswitched service in the State of Maine;
2. Exempt Skowhegan Online, Inc. from the requirements of Chapter 210 of the Commission's Rules, except that it must report the revenue and minutes of use information that is requested by the Commission, on or before April 1 of each year; and
3. Exempt Skowhegan Online, Inc. from the approval requirements of 35-A M.R.S.A. §§ 707 and 708, provided that Skowhegan Online, Inc. shall notify the Commission of any reorganization, as defined in 35-A M.R.S.A. § 707(1)(A), that results in a merger, sale or transfer of a controlling interest of Skowhegan Online, Inc. or of any entity that owns more than 50% of Skowhegan Online, Inc.. Skowhegan Online, Inc. shall also provide notice of any other changes in the name under which it does business (d/b/a), any change of the location of its business office, and any change of its contact person. Skowhegan Online, Inc. shall provide the Administrative Director of the Commission with notice of any of the changes described within 30 days following the change. If necessary, Skowhegan Online, Inc. shall amend its rate schedules and terms and conditions to reflect any change in identity.
4. Order that Skowhegan Online, Inc.'s proposed terms and conditions (pages 1-8), attached to this Order, shall be effective on the date of this Order.
5. Order that Skowhegan Online, Inc. shall not provide any intrastate dedicated service until it files with the Commission rates for the provision of such service.
6. Order that Skowhegan Online, Inc. shall comply with all applicable rules of the Commission.

Dated at Augusta, Maine this 7th day of March, 2000.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl  
Administrative Director

COMMISSIONERS VOTING FOR: Welch

Nugent  
Diamond

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### NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320 (1)-(4) and the Maine Rules of Civil Procedure, Rule 73 et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320 (5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.

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